

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

APPEAL FROM ORDER NO.592 OF 2006

With

CIVIL APPLICATION NO.771 OF 2006

In

APPEAL FROM ORDER NO.592 OF 2006

Babu Jairam Dinde : Appellant

V/s.

Dhondiram Nathu Dinde & Ors. : Respondents

...

Mr.Uday P. Warunjikar for the appellant.

Mr.Vilas J. Takalkar for respondent no.9.

...

CORAM : A.M. KHANWILKAR, J.

DATE : MARCH 9, 2007.

P.C.

1. In spite of notice for final disposal of the appeal at admission stage having been duly served on the respondents, except the respondent no.9, no one appears before the Court. The respondent no.9 is supporting the cause of the appellant. As a short question is involved, the appeal is taken up for final disposal forthwith in terms of order dated 10.8.2006.

2. This Appeal from Order takes exception to the judgement and order passed by the Civil Judge, Senior Division, Nasik, dated 13.7.2006 below exh.61 in Special Civil Suit no.253 of 2004. By this order, the trial Court had rejected the application preferred by the appellant for interim relief during the pendency of the suit. The principal basis for refusing the interim relief as noted by the trial Court in the impugned judgement is that the plaintiff had filed Regular Civil Suit no.340 of 1998 and later on withdrew the same without taking permission to file a fresh suit. In the absence of such permission, a fresh suit as filed was barred by the provisions of Order XXXIII of the C.P.C. This reason noted by the trial Court is an error apparent on the face of the record. The plaint in respect of Regular Civil Suit no.340 of 1998 was produced on record. That suit is filed by the respondent nos.4 to 8 against the respondent nos.1, 2, 3 and 9 to 13. The appellant was not a party to the said suit. Indeed, the appellant moved an application for being impleaded as party-defendant in the said suit which application, however, came to be rejected. It is only thereafter the appellant was advised to file the present suit. Thus understood, the basis on which the trial Court proceeded to refuse interim relief to the appellant cannot be sustained.

3. Accordingly, the impugned judgement and order is set aside. Instead, the application, exh.61, is restored to file to its original number, to be heard and decided by the trial Court on its own merit, in accordance with law, uninfluenced by the observations made in the impugned order. All questions in that behalf are left open. Till the said application is decided, the parties shall maintain status quo with regard to the suit property which direction operated during the pendency of the this appeal in terms of order dated 10.8.2006. The parties shall appear before the trial Court on 29.3.2007 at 11.00 a.m. on which date the trial Court may pass appropriate directions on application, exh.61, which is restored on account of the present order. The said application be finally decided, in any case, by the end of June 2007.

4. The appeal stands allowed in the aforesaid terms.

5. In view of the order passed in the appeal, no order on the Civil Application and the same stands disposed of.

A.M. KHANWILKAR, J.